



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/765,635	01/27/2004	Steven E. Morton	ECSIX 104 DIV 2	2257
2555	7590	03/16/2006	EXAMINER	
KREMBLAS, FOSTER, PHILLIPS & POLLICK 7632 SLATE RIDGE BOULEVARD REYNOLDSBURG, OH 43068			CHEVALIER, ALICIA ANN	
			ART UNIT	PAPER NUMBER
			1772	

DATE MAILED: 03/16/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<p align="center">Advisory Action Before the Filing of an Appeal Brief</p>	Application No. 10/765,635	Applicant(s) MORTON, STEVEN E.	
	Examiner Alicia Chevalier	Art Unit 1772	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 03 March 2006 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
 b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
 (a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
 (b) ☐ They raise the issue of new matter (see NOTE below);
 (c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
 (d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
 5. ☐ Applicant's reply has overcome the following rejection(s): _____.
 6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
 7. ☐ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
 The status of the claim(s) is (or will be) as follows:
 Claim(s) allowed: none.
 Claim(s) objected to: none.
 Claim(s) rejected: 39 and 40.
 Claim(s) withdrawn from consideration: none.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
 9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
 10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because: see continuation sheet.
 12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08 or PTO-1449) Paper No(s). _____
 13. ☐ Other: _____.

Continuation Sheet

Continuation of 11. because: It remains the Examiner's position that the claims are unpatentable for reasons previously of record in the final office action mailed November 30, 2005.

Response to Applicant's Arguments

1. Applicant's arguments in the after final response filed March 3, 2006 regarding the 35 U.S.C. 112, first paragraph rejection in the office action mailed November 30, 2005 of record have been carefully considered but are deemed unpersuasive.

Applicant argues that the limitation "a particulate layer ... is at least two particulate particles thick," has support in figure 9. Applicant further argues that the informal drawing Figure 9 from the parent application 10/039783.

This is not found to be persuasive because figure 9 in either instant is not commensurate in scope with Applicant's arguments.

Applicant's specification on page 13, line 18 through page 14, line 2. Recites:

A finished molded unit is shown in Fig. 9. A liquid matrix material, such as epoxy resin, is mixed with stones and the mixture is poured into the mold over the fibers. The liquid matrix material wets the fibers and causes them to become embedded within it. After the resin wets the fibers, the liquid matrix material is hardened, thereby forming a rigid matrix reinforced by fibers that is subsequently removed from the mold. The top, wearing surface of the molded unit is formed by the stones coated with epoxy resin 102, which adheres the stones to the fibers.

The description clearly states, and the same is reflected in the claims, that the matrix material includes fibers and stones. Figure 9 does not differentiate, e.g. point out, which parts of the drawing refer to stones or fibers. Therefore, it is impossible for the examiner to distinguish whether the drawing is showing fibers or stones in the matrix, since Applicant has not identified

Art Unit: 1772

either in any of the drawings. Since the fibers cannot be differentiated from the stones in the figures the limitation "a particulate layer ... is at least two particulate particles thick" is new matter since there is no recitation or drawing clearly showing support.

When the specification does not disclose that the drawings are to scale and is silent as to dimensions, arguments based on measurement of the drawing features are of little value. MPEP 2125.

Conclusion

2. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Alicia Chevalier whose telephone number is (571) 272-1490. The examiner can normally be reached on Monday through Friday from 8:00 am to 4:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Harold Pyon, can be reached on (571) 272-1498. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

ac
3/13/06

ALICIA CHEVALIER
PRIMARY EXAMINER

Alicia Chevalier
ALICIA CHEVALIER
PRIMARY EXAMINER